

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MARK WHITE,

Plaintiff,

v.

Case No. 13-15073

HON. AVERN COHN

PAUL KLEE, LEE McROBERTS,
and C. CONDON,

Defendants.

ORDER ADOPTING REPORT AND RECOMMENDATION (Doc. 166)
AND
GRANTING IN PART PLAINTIFF'S MOTION NUNC PRO TUNC Doc. 141 TO ADOPT
AMENDED COMPLAINT (Doc. 149)
AND
DENYING PLAINTIFF'S MOTIONS FOR SANCTIONS (Docs. 150, 152)
AND
DENYING WITHOUT PREJUDICE DEFENDANTS' MOTION FOR SANCTIONS (Doc.
153) AND MOTION FOR SUMMARY JUDGMENT (Doc. 158)

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff is proceeding pro se and in forma pauperis (IFP). The matter has been referred to a magistrate judge for all pretrial proceedings. Following motion practice and reports and recommendation (MJRR) which were adopted by the Court, Paul Klee, Lee McRoberts and C. Condon, remain as defendants. They are employed by the Michigan Department of Corrections (MDOC). Plaintiff claims that these defendants have violated his Eighth Amendment rights by placing him in danger from other inmates.

As the magistrate judge noted, there are several pending motions. On October

20, 2016, the magistrate judge issued a MJRR on some of the pending motions.¹ The magistrate judge recommends the following:

- Plaintiff's Motion Nunc Pro Tunc to Dismiss Docket #141 and to Adopt Amended Complaint as Filed Exhibit A in Docket #128 (Doc. 149) be granted in part;
- both of Plaintiff's motions for contempt/sanctions (Docs. 150, 152) be denied;
- Defendants' Motion for Rule 11 Sanctions (Doc. 153) be denied without prejudice;

and

- Defendants' Motion for Summary Judgment (Doc. 158) be denied without prejudice.

Neither party has objected to the recommendations² of the magistrate judge and the time for filing objections has passed.

II.

The failure to file objections to the report and recommendation waives any further right to appeal. Smith v. Detroit Federation of Teachers Local 231, 829 F.2d 1370, 1373 (6th Cir.1987). Likewise, the failure to object to the magistrate judge's report releases the Court from its duty to independently review the motions. Thomas v. Arn,

¹The magistrate judge stated that the other pending motions will be addressed in a subsequent MJRR.

²Defendants filed a paper styled "objections" in which they "object only to correct the record." (Doc. 167). Defendants seek to clarify that certain allegations of wrongdoing by defendants' counsel which formed the basis for plaintiff's motions for sanctions are allegations, not facts. Defendants further say that to the extent the MJRR implies that the allegations were "facts," the MJRR should be corrected. A fair read of the MJRR shows that although the magistrate judge used the word "fact" to describe the allegations of wrongdoing, it was in the context of explaining plaintiff's grounds for the motions. There is no indication that the magistrate judge accepted plaintiff's allegations of wrongdoing as actual facts. Thus, defendant's "objections" are unnecessary.

474 U.S. 140, 149 (1985).

However, the Court has reviewed the MJRR and agrees with the magistrate judge. Accordingly, the findings and conclusions of the magistrate judge are ADOPTED as the findings and conclusions of the Court.

- Plaintiff's Motion Nunc Pro Tunc to Dismiss Docket #141 and Motion to Adopt Amended Complaint as Filed Exhibit A in Docket #128 (Doc. 149) be GRANTED IN PART;
- both of Plaintiff's motions for contempt/sanctions (Docs. 150, 152) be DENIED;
- Defendants' Motion for Rule 11 Sanctions (Doc. 153) be DENIED WITHOUT PREJUDICE;

and

- Defendants' Motion for Summary Judgment (Doc. 158) be DENIED WITHOUT PREJUDICE.

SO ORDERED.

Dated: November 30, 2016
Detroit, Michigan

S/Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE